

Michael Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Draft Nationwide Programmatic Agreement
WT Docket No. 03-128; FCC 03-125

Dear Chairman Powell:

On behalf of the Tunica-Biloxi Indian Tribe, I am writing to comment on the Commission's proposed Nationwide Programmatic Agreement (PA) on the implementation of the National Historic Preservation Act with respect to the siting and licensing of wireless communications towers.

As a member tribal government of the United South and Eastern Tribes (USET), we fully endorse the comments already submitted to you by USET on this issue and urge the Commission to incorporate USET's suggested changes into the PA before its final promulgation. We ask that the Commission recognize its obligations under the National Historic Preservation Act and view implementation of that law through the lens of the federal government's trust responsibility to tribal governments. The protection of our culture and heritage is very closely integrated with our survival as a people and is critical to the functioning of our government.

The National Historic Preservation Act specifically requires that Federal agencies must consult with tribes before engaging in a Federal undertaking that could affect a property of religious and cultural importance to us, whether or not these properties are on tribal lands today. This law provides critical protection for our tribal heritage. We would like to see it strictly enforced and strictly implemented in the Nationwide Programmatic Agreement. Like the other USET tribes, we have lost nearly all of our land over the last 500 years. Because of this, the vast majority of our sites are not on our current tribal lands. This is one of the few ways under Federal law that we can protect our sacred heritage.

We would like to add emphasis to two major issues that have been raised by USET in their written comments. The draft NWPA establishes exclusions for certain situations where Section 106 consultation under the National Historic Preservation Act would not be required. In some cases these exclusions run for hundreds, even thousands of miles along railway corridors and interstate highways.

The justification for these exclusions appears to be a determination that in the excluded areas there is a minimal chance of further damage to sites of historic importance. However, just because an area may have been subject to some disturbance, does not mean that further disturbance will not cause further harm. The law with regard to tribal consultation is clear and provides for no exceptions: federal agencies "shall consult with any Indian tribe and Native Hawaiian organization that attached religious and cultural

significance” to properties that might be affected by a federal undertaking. 16 U.S.C. Section 470a(d)(6)(B). The exclusions, if applied to tribal sites, are a violation of the law’s clear consultation mandate.

The National Historic Preservation Act requires Federal agencies to consult with Indian tribes whenever a Federal undertaking would affect a property of religious and cultural significance to a tribe, whether it is located on or off tribal lands. Tribes already exercise great control on tribal lands; however, as described above, most of our sacred sites are located off tribal lands. It is extremely important to us, therefore, that we be fully consulted for sites off tribal lands. In Part IV of the draft NWPA, two alternatives are presented for consulting with tribes with regard to sacred sites off tribal lands.

Alternative A was developed by a working group with almost no involvement by tribes. This alternative would establish a very complicated procedure of dubious legality. USET has proposed Alternative B. Alternative B is simple and clear and meets the requirements of the National Historic Preservation Act. Under its terms, the FCC is obligated to engage in full consultation with any tribe potentially affected by the siting of a communications tower. However, in order to address certain practical problems, it provides that the FCC does not have to engage in such consultation if an Applicant (cell tower builder) secures a letter of certification from any and all interested tribes that states that such consultation is no longer necessary because any tribal concerns have been adequately addressed. We strongly support Alternative B as practical and legal.

Our tribe is committed to working in good faith with the FCC and cell tower builders to assure that everything is done to facilitate the construction of communications facilities, as long as our religious and cultural heritage is not compromised. This is an obligation we have to our ancestors and to our children, and we cannot waver from it.

Thank you for your consideration of these comments.

Sincerely,

Earl Barbry
Chairman
Tunica-Biloxi Tribe of Louisiana